

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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T.R.A. DOCKET ROOM

IN RE: *Generic Docket to Establish UNE*)
Prices for Line Sharing per FCC 99-355 and) DOCKET NO. 00-00544
Riser Cable and Terminating Wire as)
Ordered in TRA Docket No. 98-00123)

RESPONSE TO MOTION TO VACATE

Covad Communications Company ("Covad") files the following response to the "Motion to Vacate Order Regarding Dual Purpose Line Cards" filed by BellSouth Telecommunications, Inc. ("BellSouth") and other incumbent local exchange carriers ("ILECs").

Covad opposes the Motion to Vacate but does not oppose a further stay of that portion of the First Interim Order, issued in this docket on April 3, 2002, requiring the unbundling of Dual Purpose Line Cards.

BellSouth and United Telephone Southeast have appealed the TRA's Order both to the Tennessee Court of Appeals and the United States District Court. Under Tennessee law, once a notice of appeal has been filed, the trial court loses the power to amend its order.¹ The parties, of course, are free to ask the reviewing courts (and have done so) to delay action on the appeals

¹ See *Steele v. Wolfe Sales Co., Inc.*, 663 S.W.2d 799 (Tenn. App. 1983) and *State of Tennessee v. Sheryl L. Pendergrass*, 937 S.W.2d 834 (holding that the jurisdiction of the appellate court "attaches upon the filing of the notice of appeal and, therefore, the trial court loses jurisdiction," and that "once the trial court loses jurisdiction, it generally has no power to amend its judgment"). The TRA itself has been very careful regarding the handling of agency matters that are related to cases pending before the Court of Appeals. See Petition of Nextlink to Sanction BellSouth Advertising and Publishing Co., Docket 98-00646, Order issued November 2, 1998, at page 4, footnote 4, and see dissenting opinion of Director Kyle at page 8, declining to rule on an issue which was currently pending before the Court.

pending further action by the FCC. Therefore, this Authority lacks jurisdiction to amend the First Interim Order as requested by the ILECs.

Furthermore, the justification for the Motion to Vacate is that the FCC's Triennial Review Order ("TRO") reversed the FCC's "Line Splitting Order" upon which the TRA relied in ordering the ILECs to unbundle Dual Purpose Line Cards. The United States Court of Appeals for the District of Columbia is now reviewing the TRO, including the FCC's reversal of the line sharing requirement. It is premature to predict the legal future of the FCC's decision to eliminate line sharing. It is also premature to predict whether the FCC can, as it purported to do, preempt the jurisdiction of state commissions to order additional unbundling requirements beyond those listed by the FCC. That issue, too, will presumably be addressed by the appellate courts.

In the meantime, however, Covad acknowledges that the ILECs should not be required to comply with the TRA's decision regarding Dual Purpose Line Cards (Issue 20 in the Initial Order) and, therefore, Covad does not oppose an indefinite extension of the current stay. No ILEC will be prejudiced by leaving the stay in place. Once these issues are clarified by the courts, or other developments warrant, the TRA can return to this issue.

Respectfully submitted,

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